IN THE SUPREME COURT OF IOWA

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and JILL MEADOWS. M.D., Petitioner-Appellants, v. TERRY E. BRANSTAD ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE, Respondent-Appellees.	Sup. Ct. No. 17-0708 **RESISTANCE TO PETITIONER-APPELLANTS' MOTION FOR TEMPORARY INJUNCTION AND APPLICATION FOR INTERLOCUTORY APPEAL**

COME NOW Respondent-Appellees Terry E. Branstad ex rel. State of Iowa and Iowa Board of Medicine, and in support of their Resistance to Petitioners' Motion for Temporary Injunction and Application for Interlocutory Appeal state as follows:

INTRODUCTION

1. The State of Iowa has a legitimate interest in regulating the medical profession in order to promote respect for life, including life of the unborn.

2. In furtherance of this interest, the Iowa Legislature approved proposed Iowa Code section 146A.1 as part of Senate File 471 on April 18, 2017. This informed consent requirement regulates physicians who perform abortions. It does not prohibit any abortion, nor does it impose any obligation on women who seek abortions. Rather, the informed consent requirement ensures that women who seek abortions are given adequate information about their own pregnancy, the options relative to their pregnancy, and the risks attendant to an abortion, and are given adequate time to make an informed decision. By requiring physicians to obtain written certification that a woman seeking an abortion

has been provided with the information specified in the proposed section, the State is able to promote from the outset of the pregnancy its recognized interests in protecting the health of the woman and the life of the unborn child.

3. Petitioner-Appellants filed a lawsuit in the district court challenging the informed consent requirement under the Iowa constitution and sought a temporary injunction. Counsel for Respondent-Appellees received a copy of the lawsuit at 12:45 p.m. on May 3, 2017.

4. Just over twenty-four hours later, the parties appeared before the Honorable Jeffrey D. Farrell for a hearing on Petitioner-Appellants' Motion for Temporary Injunction at 1:30 p.m. on May 4, 2017.

5. Judge Farrell heard argument from the parties for nearly two hours, denied Petitioner-Appellants' motion in an oral ruling, and issued a written ruling shortly thereafter. Judge Farrell's ruling stated that it would become effective upon the signing of the bill into law.

6. Respondent-Appellee Governor Terry E. Branstad signed the bill into law in the morning of May 5, 2017.

7. Petitioner-Appellants filed a motion seeking a temporary injunction in this Court and a separate application for interlocutory appeal seeking review of Judge Farrell's denial of their motion in the district court.

RESISTANCE TO TEMPORARY INJUNCTION

8. As an initial matter, Petitioner-Appellants have already attempted to obtain a temporary injunction in this pending lawsuit. They are seeking interlocutory appeal from the denial of their motion in the district court. Even if they could have

requested an injunction from this Court in the first instance under Rule 1.1506(2), they chose to proceed in the district court. As a result, this Court should consider only their application for interlocutory review.

9. An injunction is an "extraordinary remedy" that should not be granted unless "clearly required to avoid irreparable damage." *Planned Parenthood of Mid-Iowa v. Maki*¸ 478 N.W.2d 637, 639 (Iowa 1991).

10. This Court has "repeatedly emphasized that the issuance or refusal of a temporary injunction is a delicate matter—an exercise of judicial power which requires great caution, deliberation, and sound discretion." *Kleman v. Charles City Police Dept*., 373 N.W.2d 90, 96 (Iowa 1985).

11. Perhaps most important, "[a]n injunction will not issue where the right of the complainant, which it is designed to protect, depends upon a disputed question of law about which there may be doubt, which has not been settled by the law of this state." *Iowa State Dept. of Health v. Hertko*, 282 N.W.2d 744, 751 (Iowa 1979) (quoting *Kent Products v. Hoeph*, 61 N.W.2d 711, 714-15 (Iowa 1953)).

12. Petitioner-Appellants have not identified a single Iowa case suggesting that an informed consent requirement like that at issue in this case violates the Iowa Constitution. Rather, the right asserted by Petitioner-Appellants depends upon a question of law that is very much in dispute —whether the informed consent requirement constitutes an undue burden upon the right of a woman to an abortion.

13. As this Court well knows, a strong presumption of validity protects statutes from constitutional challenges. *Miller v. Iowa Real Estate Commission*¸ 274 N.W2.d 288, 291 (Iowa 1979).

14. Petitioner-Appellants have not been able to overcome this presumption, and have not met their burden to prove that they are entitled to the relief they seek.

Irreparable Harm

15. Petitioner-Appellants have also failed to demonstrate that they will be irreparably harmed in the absence of an injunction.

16. In her affidavit, Petitioner-Appellant Meadows states that her clinic has 155 patients scheduled to receive abortions between May 1 and May 12, 2017. Meadows Affidavit, Attachment to Motion ¶ 3. She testifies that these women will be harmed because they will have to "schedule an extra visit and delay [their] abortion[s]." *Id.* She does not claim, and nothing else in the record suggests that these *particular* women will suffer any harm beyond a delay in obtaining an abortion.

17. In this proceeding, Petitioner-Appellants repeatedly claim that they have 44 women scheduled to receive abortions on May 5, 2017. *See* App. for Interlocutory Appeal ¶ 2. But they do not claim that they will be harmed other than by having to reschedule these appointments in order to comply with the informed consent requirement.

18. They do not claim that they will be unable to reschedule any of these women in a timely fashion, nor do they claim that any of these women will face increased travel costs, employment consequences, or the inability to receive a medication or surgical abortion due to Petitioner-Appellants' inability to timely provide them with a procedure that complies with the informed consent requirement.

19. The harm that they claim with respect to these 44 patients is essentially the denial of a right to abortion on demand. However, the United States Supreme Court has made clear that there is no right to abortion on demand. *Planned Parenthood of*

Southeastern Penn. v. Casey, 505 U.S. 833, 887 (1992) ("Even the broadest reading of *Roe*, however, has not suggested that there is a constitutional right to abortion on demand.").

20. While Respondent-Appellees are sympathetic to the inconvenience attendant to Petitioner-Appellants' need to reschedule these appointments, such inconvenience does not warrant the extraordinary remedy they seek.

21. In addition to these 44 patients, Petitioner-Appellants have included a wealth of testimony through affidavits that they claim shows how their patients will be harmed by the informed consent requirement. This testimony addressed hypothetical patients, and is more appropriately considered as part of Petitioner-Appellants' merits case.

22. Injunctive relief will only be granted if the "*requesting party* has no adequate relief at law and will incur irreparable damage." *Nelson v. Agro Globe Engineering, Inc.*, 578 N.W.2d 659, 662 (Iowa 1998). Because Petitioner-Appellants have not presented evidence of specific irreparable harm beyond their need to reschedule some appointments occurring next week, they have not met their burden to show that they are entitled to the extraordinary remedy of a temporary injunction.

Likelihood of Success on the Merits

23. In his order denying Petitioner-Appellants' motion, Judge Farrell concluded that Petitioner-Appellants were not able to show sufficient likelihood of success on the merits of their challenge to warrant temporary injunctive relief. He noted that the United States Supreme Court in *Casey* considered many of the same arguments when it held that a 24-hour waiting period did not impose an undue burden. *See* Ruling

on Plaintiff's Petition for Temporary Injunction 05/04/17, Polk County No. EQCE081503, at 3-4.

24. As this Court has recognized, the State may exercise its regulatory authority "in the furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn," so long as it "has a rational basis to act, and it does not impose an undue burden." *Planned Parenthood of the Heartland v. Iowa Board of Medicine*¸ 865 N.W.2d 252, 263 (2015) (quoting *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007)).

25. As the United States Supreme Court recognized in *Casey*¸ "[b]ecause the informed consent requirement facilitates the wise exercise of [the right to an abortion], it cannot be classified as an interference with the right *Roe* protects. The informed consent requirement is not an undue burden on that right." 505 U.S. at 887.

26. In light of the "circumscribed review" at the temporary injunction stage, the presumption of constitutionality that is afforded when a statute is challenged, and the extraordinary nature of the remedy they seek, Petitioner-Appellants have not shown a sufficient likelihood of success on the merits to justify their entitlement to relief.

Harm to the State

27. Petitioner-Appellants repeatedly claim in their application for interlocutory appeal and supporting briefing, as they did in the district court, that Respondent-Appellees have "no evidence" that the State will suffer harm if enforcement of its duly enacted law is enjoined.

28. Respondent-Appellees do not bear the burden of showing that an injunction should not issue. On the contrary, Petitioner-Appellants bear the burden to

prove that they are entitled to relief, and must do so in light of the strong presumption of validity that is afforded to the challenged law. *Miller*, 274 N.W.2d at 291.

29. Moreover, Respondent-Appellees were given an extremely limited amount of time to respond to Petitioner-Appellants' request for relief. In order to make every effort to allow Petitioner-Appellants' request to be heard prior to the challenged law taking effect, Respondent-Appellees agreed to a hearing within 24 hours of receiving the lawsuit. It is unfair for Petitioner-Appellants to hale Respondent-Appellees into court in such a compressed time frame and then to attempt to shift the burden to Respondent-Appellees to provide evidence that they will be harmed by the relief Petitioner-Appellants seek.

RESISTANCE TO APPLICATION FOR

INTERLOCUTORY APPEAL

30. Only in exceptional situations where the interests of sound and efficient judicial administration are best served will an interlocutory appeal be granted. *Banco Mortg. Co. v. Steil*, 351 N.W.2d 784 (Iowa 1984).

31. The party seeking to appeal at an early stage of the district court proceedings has the heavy burden to show that the likely benefit to be derived from early appellate review outweighs the likely detriment and therefore satisfies the requirement that the interests of justice be better served.

32. The interests of justice will be better served by denial of Petitioner-Appellants' request for interlocutory appeal. As explained above, the bulk of Petitioner-Appellants' evidence supporting their request for temporary injunctive relief is more appropriate for the determination of their challenge on the merits.

33. As this Court has explained, "the decision to issue or refuse a *temporary injunction* rests largely within the sound discretion of the district court. We recognize a temporary injunction is a delicate matter, and the exercise of judicial power to issue or refuse a temporary injunction requires great caution, deliberation, and sound discretion. Thus, we will not generally interfere with the district court decision unless the discretion has been abused or the decision violates some principle of equity." *PIC USA v. North Carolina Farm Partnership,* 672 N.W.2d 718, 722 (Iowa 2003) (citing *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W .2d 178, 180-81 (Iowa 2001)).

34. As explained above, Petitioner-Appellants have not presented evidence of the type of imminent harm sufficient to justify the relief they seek. It is in the interest of both parties—not to mention judicial economy—to proceed to the merits of Petitioner-Appellants' challenge. Given the deferential standard of review and the admirable work Judge Farrell performed under the circumstances, an interlocutory appeal is unnecessary and will unduly delay this case to the detriment of both parties.

WHEREFORE, Respondent-Appellees respectfully request that Petitioner-Appellants Motion for Temporary Injunction and Application for Interlocutory Appeal be denied.

Respectfully submitted,

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